



## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

[RTID 0648-XD032]

#### **Takes of Marine Mammals Incidental to Specified Activities; Taking Marine Mammals Incidental to Site Characterization Surveys Offshore from Massachusetts to New Jersey for Vineyard Northeast, LLC**

**AGENCY:** National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

**ACTION:** Notice; proposed incidental harassment authorization (IHA); request for comments on proposed authorization and possible renewal.

**SUMMARY:** NMFS has received a request from Vineyard Northeast, LLC (Vineyard Northeast) for authorization to take marine mammals incidental to marine site characterization surveys offshore from Massachusetts to New Jersey in the Bureau of Ocean Energy Management (BOEM) Commercial Lease of Submerged Lands for Renewable Energy Development on the Outer Continental Shelf Lease Areas OCS-A 0522 and OCS-A 0544 (Lease Areas) and associated offshore export cable corridor (OECC) routes.

**DATES:** Comments and information must be received no later than *[insert date 30 days after date of publication in the FEDERAL REGISTER]*.

**ADDRESSES:** Comments should be addressed to Jolie Harrison, Chief, Permits and Conservation Division, Office of Protected Resources, National Marine Fisheries Service. Written comments should be submitted via email to *ITP.Taylor@noaa.gov*.

*Instructions:* NMFS is not responsible for comments sent by any other method, to any other address or individual, or received after the end of the comment period. Comments, including all attachments, must not exceed a 25-megabyte file size. All

comments received are a part of the public record and will generally be posted online at <https://www.fisheries.noaa.gov/permit/incidental-take-authorizations-under-marine-mammal-protection-act> without change. All personal identifying information (e.g., name, address) voluntarily submitted by the commenter may be publicly accessible. Do not submit confidential business information or otherwise sensitive or protected information.

**FOR FURTHER INFORMATION CONTACT:** Jessica Taylor, Office of Protected Resources, NMFS, (301) 427-8401. Electronic copies of the original application and supporting documents (including NMFS **Federal Register** notices of the original proposed and final authorizations, and the previous IHA), as well as a list of the references cited in this document, may be obtained online at:

<https://www.fisheries.noaa.gov/national/marine-mammal-protection/incidental-take-authorizations-other-energy-activities-renewable>. In case of problems accessing these documents, please call the contact listed above.

## **SUPPLEMENTARY INFORMATION:**

### **Background**

The activities described in Vineyard Northeast's request and the acoustic sources proposed for use are identical to what was previously analyzed in support of the IHA issued by NMFS to Vineyard Northeast for 2022 site characterization surveys (2022 IHA) (87 FR 30872, May 20, 2022; 87 FR 52913, August 30, 2022), although the survey duration and project area will be a subset of the survey effort authorized for the 2022 IHA as a portion of this effort has been completed. All proposed mitigation, monitoring, and reporting requirements remain the same. While Vineyard Northeast's planned activity would qualify for renewal of the 2022 IHA, due to the availability of updated marine mammal density data (<https://seamap.env.duke.edu/models/Duke/EC/>), which NMFS has determined represents the best available scientific data, NMFS has determined to proceed

with a new IHA process rather than a renewal, providing a 30-day period for the public to comment on this proposed action.

Pursuant to the Marine Mammal Protection Act (MMPA), NMFS is requesting comments on its proposal to issue an IHA to allow Vineyard Northeast to incidentally take marine mammals during the specified activities. NMFS is also requesting comments on a possible 1-year Renewal IHA that could be issued under certain circumstances and if all requirements are met, as described in **Request for Public Comments** at the end of this notice. NMFS will consider public comments prior to making any final decision on the issuance of the requested MMPA authorization and agency responses will be summarized in the final notice of our decision.

The MMPA prohibits the “take” of marine mammals, with certain exceptions. Sections 101(a)(5)(A) and (D) of the MMPA (16 U.S.C. 1361 *et seq.*) direct the Secretary of Commerce (as delegated to NMFS) to allow, upon request, the incidental, but not intentional, taking of small numbers of marine mammals by U.S. citizens who engage in a specified activity (other than commercial fishing) within a specified geographical region if certain findings are made and either regulations are issued or, if the taking is limited to harassment, a notice of a proposed incidental take authorization may be provided to the public for review.

Authorization for incidental takings shall be granted if NMFS finds that the taking will have a negligible impact on the species or stock(s) and will not have an unmitigable adverse impact on the availability of the species or stock(s) for taking for subsistence uses (where relevant). Further, NMFS must prescribe the permissible methods of taking and other “means of effecting the least practicable adverse impact” on the affected species or stocks and their habitat, paying particular attention to rookeries, mating grounds, and areas of similar significance, and on the availability of such species or stocks for taking for certain subsistence uses (referred to in shorthand as “mitigation”);

and requirements pertaining to the mitigation, monitoring and reporting of such takings are set forth.

### **National Environmental Policy Act**

To comply with the National Environmental Policy Act of 1969 (NEPA; 42 U.S.C. 4321 *et seq.*) and NOAA Administrative Order (NAO) 216-6A, NMFS must review our proposed action (*i.e.*, the issuance of an IHA) with respect to potential impacts on the human environment. This action is consistent with categories of activities identified in Categorical Exclusion B4 (IHAs with no anticipated serious injury or mortality) of the Companion Manual for NOAA Administrative Order 216-6A, which do not individually or cumulatively have the potential for significant impacts on the quality of the human environment and for which we have not identified any extraordinary circumstances that would preclude this categorical exclusion. Accordingly, NMFS has preliminarily determined that the issuance of the proposed IHA qualifies to be categorically excluded from further NEPA review.

We will review all comments submitted in response to this notification prior to concluding our NEPA process or making a final decision on the IHA request.

### **Summary of Request**

On April 17, 2023, NMFS received a request from Vineyard Northeast for an IHA to take marine mammals incidental to high resolution geophysical (HRG) marine site characterization surveys offshore from Massachusetts to New Jersey in the areas of BOEM Commercial Lease of Submerged Lands for Renewable Energy Development on the OCS-A 0522 (Lease Area), OCS-A 0544 (Lease Area), and associated offshore export cable corridor (OECC) routes. Following NMFS' review of the application, Vineyard Northeast submitted a revised request on May 25, 2023. The application (the 2023 request) was deemed adequate and complete on May 25, 2023. Vineyard Northeast's request is for take of 19 species (comprising 20 stocks) of marine mammals,

by Level B harassment only. Neither Vineyard Northeast nor NMFS expect serious injury or mortality to result from this activity and, therefore, an IHA is appropriate. Take by Level A harassment (injury) is unlikely, even absent mitigation, based on the characteristics of the signals produced by the acoustic sources planned for use.

NMFS has previously issued a similar IHA to Vineyard Northeast. On December 17, 2021, NMFS received a request from Vineyard Northeast for an IHA to take marine mammals incidental to marine site characterization surveys offshore from Massachusetts to New Jersey, in the area of Commercial Lease of Submerged Lands for Renewable Energy Development on the Outer Continental Shelf Lease Areas OCS-A 0522 and OCS-A 0544 (Lease Areas) and potential OECC routes to landfall locations. Vineyard Northeast requested authorization to take small numbers of 19 species (comprising 20 stocks) of marine mammals by Level B harassment only. NMFS published a notice of the proposed IHA in the **Federal Register** on May 20, 2022 (87 FR 30872). After a 30-day public comment period and consideration of all public comments received, we subsequently issued the 2022 IHA, which is effective from July 27, 2022, to July 26, 2023 (87 FR 52913, August 30, 2022).

Vineyard Northeast completed a subset of the survey work under the 2022 IHA and submitted a preliminary monitoring report, which demonstrates that they conducted the required marine mammal mitigation and monitoring, and did not exceed the authorized levels of take under the previous IHA issued for surveys offshore from Massachusetts to New Jersey (See 87 FR 52913, August 30, 2022). These monitoring results are available to the public on our website:

*<https://www.fisheries.noaa.gov/national/marine-mammal-protection/incidental-take-authorizations-other-energy-activities-renewable>.*

The 2023 request is nearly identical to the 2022 IHA, with the exception that the survey effort is a subset of the original effort authorized for the 2022 IHA. However,

Duke University's Marine Geospatial Ecology Laboratory released updated marine mammal density information (June 20, 2022) for all species in the project area (<https://seamap.env.duke.edu/models/Duke/EC/>) after issuance of the 2022 IHA, and NMFS determined it would issue a proposed IHA rather than undertake the renewal process. In evaluating the 2023 request and to the extent deemed appropriate, NMFS also relies on the information presented in notices associated with issuance of the 2022 IHA (87 FR 30872, May 30 2022; 87 FR 52913, August 30, 2022).

## **Description of the Proposed Activity and Anticipated Impacts**

### *Overview*

Vineyard Northeast proposes to conduct HRG surveys in the BOEM Lease Areas OCS-A 0522 and 0544 and along potential submarine OECC's from southern Massachusetts to southern New Jersey. The purpose of the proposed surveys is to obtain an assessment of seabed (geophysical, geotechnical, and geohazard), ecological, and archeological conditions within the footprint of the planned offshore wind facility development area. Surveys are also conducted to inform and support engineering design and to map unexploded ordnance. Survey equipment would be deployed from multiple vessels during site characterization activities in the project area, and up to two vessels would operate at a time in the lease areas and along the OECCs. During survey effort, the vessel would operate at a maximum speed of 4 knots (4.6 miles or 7.4 km per hour). Underwater sound, resulting from Vineyard Northeast's activities, has the potential to result in incidental take of marine mammals in the form of Level B harassment.

### *Dates and Duration*

The proposed activity is estimated to require 467 survey days (37,360 km of trackline) using a maximum of 4 concurrently operating survey vessels, and is expected to be carried out over the course of the 1-year period beginning from the date of issuance of this IHA. A "survey day" is defined as a 24-hour (hr) activity period in which active

HRG acoustic sources are used. This schedule is inclusive of any inclement weather downtime and crew transfers. The number of survey days was calculated as the number of days needed to reach the overall level of effort required to meet survey objectives assuming any single vessel covers, on average, 80 km (49.7 miles) of survey trackline per 24 hours of operations. By the time the 2022 IHA expires, Vineyard Northeast expects to have completed 302 vessel days (24,160 km of trackline) of the original planned survey effort (869 vessel days; 69,520 km of trackline). Vineyard Northeast has estimated survey effort to require 100 vessel days (8,000 km of trackline) less than originally anticipated in association with the 2022 IHA (87 FR 52913, August 30, 2022).

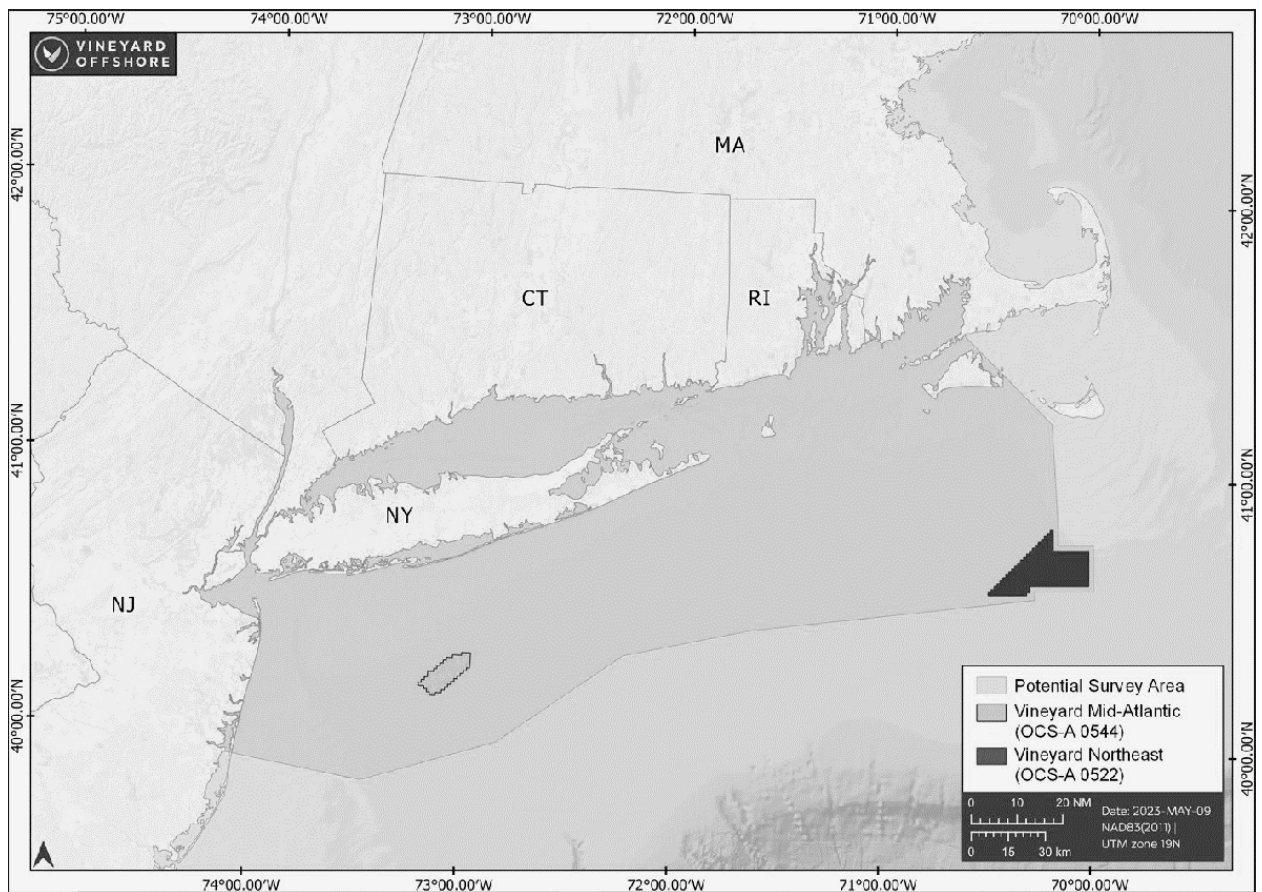
### *Specific Geographic Region*

Vineyard Northeast's proposed activities would occur in both Federal offshore waters (including Lease Areas OCS-A 0522 and OCS-A 0544) and along potential OECCs in both Federal and State nearshore waters of Massachusetts, Rhode Island, Connecticut, New York, and New Jersey, as shown in Figure 1. As compared to the 2022 IHA (87 FR 52913, August 30, 2022), Vineyard Northeast revised their project area to be more representative of the actual area in which HRG surveys would occur. The revised project area description is based upon updated information received from the Vineyard Northeast site investigation team.

The Lease Area OCS-A 0522 is approximately 536 square kilometers (km<sup>2</sup>) (132,370 acres) and located 24 kilometers (km) (15 miles; mi) from the southeast corner of Martha's Vineyard, within the Massachusetts Wind Energy Area (WEA). The 174 km<sup>2</sup> (43,056 acre) Lease Area OCS-A 0544 is located approximately 38 km (24 mi) from Long Island, New York, within BOEM's Mid-Atlantic Planning Area. Surveys outside of the Lease Areas would extend from southern Massachusetts to southern New Jersey, including the Massachusetts/Rhode Island WEA as well as the northern portion of the Mid-Atlantic planning area. Total survey area would be approximately 33,814 km<sup>2</sup>

(8,355,621.4 acres). Water depth across the proposed survey area ranges from approximately 35 to 60 meters (m) (115 to 197 feet [ft]) in the Lease Areas. Average water depth along the proposed OECCs is approximately 38 m (123.8 ft).





**Figure 1 -- Map of the Proposed Survey Area**

### *Detailed Description of the Action*

A detailed description of the proposed survey activities can be found in the previous **Federal Register** notices (87 FR 30872, May 20, 2022; 87 FR 52913, August 30, 2022) and supplementary documents, available online at:

<https://www.fisheries.noaa.gov/action/incidental-take-authorization-vineyard-northeast-llc-marine-site-characterization-surveys>. The specific geographic region and nature of the activities, including the types of HRG equipment planned for use (side scan sonar, multibeam echosounder, magnetometers and gradiometers, parametric sub-bottom profiler (SBP), compressed high intensity radar pulse (CHIRP) SBP, boomers, and sparkers; daily trackline distances (80 km per day); and the number of survey vessels (up to two in a Lease Area and up to two along OECC routes, including nearshore survey areas) are identical or nearly identical to those described in those previous notices.

### *Description of Marine Mammals*

A description of the marine mammals in the proposed survey area can be found in the previous documents and notices for the 2022 IHA (87 FR 30872, May 20, 2022; 87 FR 52913, August 30, 2022), which remains applicable to this proposed IHA. NMFS reviewed the most recent draft Stock Assessment Reports (SARs, found on NMFS' website at <https://www.fisheries.noaa.gov/national/marine-mammal-protection/marine-mammal-stock-assessments>, up-to-date information on relevant Unusual Mortality Events (UMEs; <https://www.fisheries.noaa.gov/national/marine-mammal-protection/marine-mammal-unusual-mortality-events>), and recent scientific literature and determined that no new information affects our original analysis of impacts under the 2022 IHA.

NMFS notes that, since issuance of the 2022 IHA, a new SAR is available for the North Atlantic right whale. Estimated abundance for the species declined from 368 to 338. However, this change does not affect our analysis of impacts, as described under the 2022 IHA.

### *Potential Effects on Marine Mammals and Their Habitat*

A description of the potential effects of the specified activities on marine mammals and their habitat can be found in the documents supporting the 2022 IHA (87 FR 30872, May 20, 2022; 87 FR 52913, August 30, 2022). At present, there is no new information on potential effects that would influence our analysis.

### *Estimated Take*

A detailed description of the methods used to estimate take anticipated to occur incidental to the project is found in the previous **Federal Register** notices (87 FR 30872, May 20, 2022; 87 FR 52913, August 30, 2022). The methods of estimating take are identical to those used in the 2022 IHA. Vineyard Northeast updated the marine mammal densities based on new information (Roberts *et al.*, 2016; Roberts *et al.*, 2023), available online at: <https://seamap.env.duke.edu/models/Duke/EC/>. We refer the reader to Table 8 in Vineyard Northeast’s 2023 IHA request for the specific density values used in the analysis. The IHA request is available online at: <https://www.fisheries.noaa.gov/national/marine-mammal-protection/incidental-take-authorizations-other-energy-activities-renewable>.

The take that NMFS proposes to authorize can be found in Table 1, which presents the results of Vineyard Northeast’s density-based calculations for the survey area. For comparative purposes, we have provided the 2022 IHA authorized Level B harassment take (87 FR 52913, August 30, 2022). NMFS notes that take by Level A harassment was not requested, nor does NMFS anticipate that it could occur. Therefore, NMFS has not proposed to authorize any take by Level A harassment. Mortality or serious injury is neither anticipated to occur nor proposed for authorization.

**Table 1 -- Summary of Take Numbers Proposed for Authorization**

Species	Scientific Name	Stock	Abundance	2022 IHA Authorized Take	2023 Proposed IHA	
					Take Proposed for Authorization <sup>1</sup>	Max Percent Population

Blue whale	<i>Balaenoptera musculus</i>	Western North Atlantic	402	1	1	0.25
North Atlantic Right Whale	<i>Eubalaena glacialis</i>	Western North Atlantic	338	40	12	3.6
Humpback Whale	<i>Megaptera novaeangliae</i>	Gulf of Maine	1,396	47	12	0.86
Fin Whale	<i>Balaenoptera physalus</i>	Western North Atlantic	6,802	77	20	0.29
Sei Whale	<i>Balaenoptera borealis</i>	Nova Scotia	6,292	5	5	0.08
Minke whale	<i>Balaenoptera acutorostrata</i>	Canadian Eastern Coastal	21,968	42	46	0.21
Sperm whale	<i>Physeter macrocephalus</i>	North Atlantic	4,349	12	2	0.05
Long-finned pilot whale <sup>1</sup>	<i>Globicephala melas</i>	Western North Atlantic	39,215	405	17	0.04
Killer whale <sup>2</sup>	<i>Orcinus orca</i>	Western North Atlantic	UNK	2	4 <sup>3</sup>	5.9 <sup>4</sup>
False killer whale <sup>2</sup>	<i>Pseudorca crassidens</i>	Western North Atlantic	1,791	5	5	0.28
Atlantic spotted dolphin <sup>3</sup>	<i>Stenella frontalis</i>	Western North Atlantic	39,921	29	29	0.07
Atlantic white-sided dolphin	<i>Lagenorhynchus acutus</i>	Western North Atlantic	93,233	1,124	129	0.14
Bottlenose dolphin	<i>Tursiops truncatus</i>	Western North Atlantic Northern Migratory Coastal	6,639	151	45	0.68
		Western North Atlantic Offshore	62,851	569	169	0.27
Common dolphin	<i>Delphinus delphis</i>	Western North Atlantic	172,974	13,904	7,472	4.3
Risso's dolphin	<i>Grampus griseus</i>	Western North Atlantic	35,215	101	9	0.03
White-beaked dolphin <sup>2</sup>	<i>Lagenorhynchus albirostris</i>	Western North Atlantic	536,016	30	30	0.006
Harbor porpoise	<i>Phocoena phocoena</i>	Gulf of Maine/Bay of Fundy	95,543	2,033	347	0.36
Harbor seal <sup>5</sup>	<i>Phoca vitulina</i>	Western North Atlantic	61,336	939	939	1.5
Gray seal <sup>5</sup>	<i>Halichoerus grypus</i>	Western North Atlantic	27,300 <sup>6</sup>	418	418	1.5

<sup>1</sup> Roberts et al. (2023) only provides density estimates for pilot whales as a guild. Given the project's location, NMFS assumes that all take will be of long-finned pilot whales.

<sup>2</sup> Rare (or unlikely to occur) species.

<sup>3</sup> Adjusted according to average group size (Kraus *et al.*, 2016; Palka *et al.*, 2017).

<sup>4</sup> Based upon minimum population estimate of 67 individual killer whales identified in the Northwestern Atlantic Ocean (Lawson and Stevens, 2014).

<sup>5</sup> Roberts *et al.* (2023) only provides density estimates for seals without differentiating by species. In order to determine the species-specific density-based exposure estimates for seals, Vineyard Northeast used the following approach. Vineyard Northeast summed the SAR  $N_{\text{best}}$  abundance estimates (Hayes *et al.*, 2022) for the 2 seal species and divided the total by the estimate for each species to get the proportion of the total for each species. Vineyard Northeast then multiplied these proportions by the total estimated exposure for the seal guild density (Roberts *et al.*, 2023) to get the species-specific density-based exposure estimates. NMFS accepts this approach.

<sup>6</sup> NMFS' stock abundance estimate (and associated PBR value) applies to U.S. population only. Total stock abundance (including animals in Canada) is approximately 451,600.

### *Description of Proposed Mitigation, Monitoring and Reporting Measures*

The mitigation, monitoring, and reporting measures proposed here are identical to those included in the **Federal Register** notice announcing the final 2022 IHA and the discussion of the least practicable adverse impact included in that document remains accurate. These mitigation, monitoring, and reporting measures are described below. As described in the previous **Federal Register** notices (87 FR 30872, May 20, 2022; 87 FR 52913, August 30, 2022), NMFS determined that issuance of the 2022 IHA to Vineyard Northeast was within the scope of the NOAA Fisheries Greater Atlantic Regional Office (GARFO) programmatic consultation regarding geophysical surveys along the U.S. Atlantic coast in the three Atlantic Renewable Energy Regions (NOAA GARFO, 2021; <https://www.fisheries.noaa.gov/new-england-mid-atlantic/consultations/section-7-take-reporting-programmatics-greater-atlantic#offshore-wind-site-assessment-and-site-characterization-activities-programmatic-consultation>). NMFS similarly concludes that the currently proposed survey activities are within scope of the consultation, and thus will require adherence to the relevant Project Design Criteria (PDC) (specifically PDCs 4, 5, and 7).

Additionally, on August 1, 2022, NMFS announced proposed changes to the existing North Atlantic right whale vessel speed regulations to further reduce the likelihood of mortalities and serious injuries to endangered North Atlantic right whales from vessel collisions, which are a leading cause of the species' decline and a primary

factor in an ongoing Unusual Mortality Event (87 FR 46921). Should a final vessel speed rule be issued and become effective during the effective period of this IHA (or any other MMPA incidental take authorization), the authorization holder would be required to comply with any and all applicable requirements contained within the final rule. Specifically, where measures in any final vessel speed rule are more protective or restrictive than those in this or any other MMPA authorization, authorization holders would be required to comply with the requirements of the rule. Alternatively, where measures in this or any other MMPA authorization are more restrictive or protective than those in any final vessel speed rule, the measures in the MMPA authorization must be followed. The responsibility to comply with the applicable requirements of any vessel speed rule would become effective immediately upon the effective date of any final vessel speed rule and, when notice is published of the effective date, NMFS would also notify Vineyard Northeast if the measures in the speed rule were to supersede any of the measures in the MMPA authorization.

*Establishment of Shutdown Zones (SZ)*—Marine mammal SZs must be established around the HRG survey equipment and monitored by NMFS-approved protected species observers (PSO) during HRG surveys as follows:

- 500-m SZ for North Atlantic right whales during use of specified acoustic sources (impulsive: sparkers and boomers; non-impulsive: non-parametric sub-bottom profilers); and,
- 100-m SZ for all other marine mammals (excluding North Atlantic right whales) during operation of the sparker and boomer. The only exception for this is for pinnipeds (seals) and small delphinids (*i.e.*, those from the genera *Delphinus*, *Lagenorhynchus*, *Stenella* or *Tursiops*).

If a marine mammal is detected approaching or entering the SZs during the HRG survey, the vessel operator would adhere to the shutdown procedures described below to

minimize noise impacts on the animals. During use of acoustic sources with the potential to result in marine mammal harassment (sparkers, boomers, and non-parametric sub-bottom profilers; *i.e.*, anytime the acoustic source is active, including ramp-up), occurrences of marine mammals within the monitoring zone (but outside the SZs) must be communicated to the vessel operator to prepare for potential shutdown of the acoustic source.

*Visual Monitoring*—Monitoring must be conducted by qualified PSOs who are trained biologists, with minimum qualifications described in the **Federal Register** notices for the 2022 project (87 FR 30872, May 20, 2022; 87 FR 52913, August 30, 2022). Vineyard Northeast must have one PSO on duty during the day and a minimum of two NMFS-approved PSOs must be on duty and conducting visual observations when HRG equipment is in use at night. Visual monitoring must begin no less than 30 minutes prior to ramp-up of HRG equipment and continue until 30 minutes after use of the acoustic source. PSOs must establish and monitor the applicable clearance zones, SZs, and vessel separation distances as described in the 2022 IHA (87 FR 52913, August 30, 2022). PSOs must coordinate to ensure 360-degree visual coverage around the vessel from the most appropriate observation posts, and must conduct observations while free from distractions and in a consistent, systematic, and diligent manner. PSOs are required to estimate distances to observed marine mammals. It is the responsibility of the Lead PSO on duty to communicate the presence of marine mammals as well as to communicate action(s) that are necessary to ensure mitigation and monitoring requirements are implemented as appropriate.

*Pre-Start Clearance*— Marine mammal clearance zones (CZs) must be established around the HRG survey equipment and monitored by NMFS-approved PSOs prior to use of boomers, sparkers, and non-parametric sub-bottom profilers as follows:

- 500-m CZ for all Endangered Species Act-listed species; and

- 100-m CZ for all other marine mammals.

Prior to initiating HRG survey activities, Vineyard Northeast must implement a 30-minute pre-start clearance period. The operator must notify a designated PSO of the planned start of ramp-up where the notification time should not be less than 60 minutes prior to the planned ramp-up to allow the PSOs to monitor the CZs for 30 minutes prior to the initiation of ramp-up. Prior to ramp-up beginning, Vineyard Northeast must receive confirmation from the PSO that the CZs are clear prior to preceding. Any PSO on duty has the authority to delay the start of survey operations if a marine mammal is detected within the applicable pre-start clearance zones.

During this 30-minute period, the entire CZ must be visible. The exception to this would be in situations where ramp-up must occur during periods of poor visibility (inclusive of nighttime) as long as appropriate visual monitoring has occurred with no detections of marine mammals in 30 minutes prior to the beginning of ramp-up.

If a marine mammal is observed within the relevant CZs during the pre-start clearance period, initiation of HRG survey equipment must not begin until the animal(s) has been observed exiting the respective CZ, or, until an additional period has elapsed with no further sighting (*i.e.*, minimum 15 minutes for small odontocetes and seals; 30 minutes for all other species). The pre-start clearance requirement includes small delphinids. PSOs must also continue to monitor the zone for 30 minutes after survey equipment is shut down or survey activity has concluded.

*Ramp-Up of Survey Equipment*—When technically feasible, a ramp-up procedure must be used for geophysical survey equipment capable of adjusting energy levels at the start or re-start of survey activities. The ramp-up procedure must be used at the beginning of HRG survey activities in order to provide additional protection to marine mammals near the project area by allowing them to detect the presence of the survey and vacate the area prior to the commencement of survey equipment operation at full power. Ramp-up



of the survey equipment must not begin until the relevant SZs have been cleared by the PSOs, as described above. HRG equipment operators must ramp up acoustic sources to half power for 5 minutes and then proceed to full power. If any marine mammals are detected within the SZs prior to or during ramp-up, the HRG equipment must be shut down (as described below).

*Shutdown Procedures*—If an HRG source is active and a marine mammal is observed within or entering a relevant SZ (as described above), an immediate shutdown of the HRG survey equipment is required. When shutdown is called for by a PSO, the acoustic source must be immediately deactivated and any dispute resolved only following deactivation. Any PSO on duty has the authority to delay the start of survey operations or to call for shutdown of the acoustic source if a marine mammal is detected within the applicable SZ. The vessel operator must establish and maintain clear lines of communication directly between PSOs on duty and crew controlling the HRG source(s) to ensure that shutdown commands are conveyed swiftly while allowing PSOs to maintain watch. Subsequent restart of the HRG equipment may only occur after the marine mammal has been observed exiting the relevant SZ, or, until an additional period has elapsed with no further sighting of the animal within the relevant SZ.

Upon implementation of shutdown, the HRG source may be reactivated after the marine mammal that triggered the shutdown has been observed exiting the applicable SZ or, following a clearance period of 15 minutes for small odontocetes (*i.e.*, harbor porpoise) and 30 minutes for all other species with no further observation of the marine mammal(s) within the relevant SZ. If the HRG equipment is shut down for brief periods (*i.e.*, less than 30 minutes) for reasons other than mitigation (*e.g.*, mechanical or electronic failure) the equipment may be reactivated as soon as is practicable at full operational level, without 30 minutes of pre-clearance, only if PSOs have maintained constant visual observation during the shutdown and no visual detections of marine

mammals occurred within the applicable SZs during that time. For a shutdown of 30 minutes or longer, or if visual observation was not continued diligently during the pause, pre-clearance observation is required, as described above.

The shutdown requirement is waived for pinnipeds (seals) and certain genera of small delphinids (*i.e.*, *Delphinus*, *Lagenorhynchus*, *Stenella*, or *Tursiops*) under certain circumstances. If a delphinid(s) from these genera is visually detected within the SZ, shutdown would not be required. If there is uncertainty regarding identification of a marine mammal species (*i.e.*, whether the observed marine mammal(s) belongs to one of the delphinid genera for which shutdown is waived), PSOs must use best professional judgment in making the decision to call for a shutdown.

If a species for which authorization has not been granted, or a species for which authorization has been granted but the authorized number of takes have been met, approaches or is observed within the area encompassing the Level B harassment isopleth (178 m), shutdown must occur.

*Vessel Strike Avoidance*—Vineyard Northeast must comply with vessel strike avoidance measures as described in the **Federal Register** notice for the 2022 IHA (87 FR 52913, August 30, 2022). This includes speed restrictions (10 knots or less) when mother/calf pairs, pods, or large assemblages of cetaceans are spotted near a vessel; species-specific vessel separation distances; appropriate vessel actions when a marine mammal is sighted (*e.g.*, avoid excessive speed, remain parallel to animal's course, *etc.*); and monitoring of the NMFS North Atlantic Right Whale reporting system and WhaleAlert daily.

Throughout all phases of the survey activities, Vineyard Northeast must monitor NOAA Fisheries North Atlantic right whale reporting systems for the establishment of a dynamic management area (DMA). If NMFS establishes a DMA in the surrounding area,

including the project area or export cable routes being surveyed, Vineyard Northeast is required to abide by the 10-knot speed restriction.

*Training*—Project-specific training is required for all vessel crew prior to the start of survey activities.

*Reporting*—PSOs must record specific information as described in the **Federal Register** notice of the issuance of the 2022 IHA (87 FR 52913, August 30, 2022). Within 90 days after completion of survey activities, Vineyard Northeast must provide NMFS with a monitoring report, which must include summaries of recorded takes and estimates of the number of marine mammals that may have been harassed.

In the event of a ship strike or discovery of an injured or dead marine mammal, Vineyard Northeast must report the incident to the Office of Protected Resources (OPR), NMFS and to the New England/Mid-Atlantic Regional Stranding Coordinator as soon as feasible. The report must include the information listed in the **Federal Register** notice of the issuance of the initial IHA (87 FR 52913, August 30, 2022).

### **Preliminary Determinations**

Vineyard Northeast's HRG survey activities are a subset but otherwise unchanged from those analyzed in support of the 2022 IHA. The effects of the activity, taking into consideration the proposed mitigation and related monitoring measures, remain unchanged from those evaluated in support of the 2022 IHA, regardless of the minor increase in estimated take for one species (minke whale). NMFS expects that all potential takes would be short-term Level B behavioral harassment in the form of temporary avoidance of the area or decreased foraging, reactions that are considered to be of low severity and with no lasting biological consequences (*e.g.*, Southall *et al.*, 2007). In addition to being temporary, the maximum harassment zone around a survey vessel is 178 m from use of the Applied Acoustics AA251 Boomer. Although this distance is assumed for all survey activity evaluated here and in estimating take numbers proposed

for authorization, in reality, much of the survey activity would involve use of acoustic sources with a reduced acoustic harassment zone (4 m for the Edge Tech Chirp 216 or 141 m for the GeoMarine Geo Spark 2000), producing expected effects of particularly low severity. Therefore, the ensonified area surrounding each vessel is relatively small compared to the overall distribution of the animals in the area and the available habitat.

The proposed survey area overlaps or is in close proximity to feeding biologically important areas (BIA)s for North Atlantic right whales (Cape Cod Bay and Massachusetts Bay BIA, February-April/Great South Channel and Georges Bank Shelf Break BIA, April-June), humpback whales (March-December), fin whales (year-round/March-October), sei whales (May-November), and minke whales (March-November), as well as overlaps the migratory BIA for North Atlantic right whales (November 1-April 30) (LaBrecque *et al.*, 2015). In addition, the proposed survey area overlaps with the area south of Martha's Vineyard and Nantucket, referred to as "South of the Islands," which has been identified as relatively new year-round core North Atlantic right whale foraging habitat (Oleson *et al.*, 2020; Quintana-Rizzo *et al.*, 2021). As prey species are mobile and broadly distributed throughout the survey area, marine mammals that are temporarily displaced during survey activities are expected to be able to resume foraging once they have moved away from areas with disturbing levels of underwater noise, thus we do not expect biologically significant impacts to feeding behavior. In addition, most of these feeding BIAs are extensive and sufficiently large (e.g., 3,149 km<sup>2</sup> and 12,247 km<sup>2</sup> for North Atlantic right whales; 47,701 km<sup>2</sup> for humpback whales; 18,015 km<sup>2</sup> and 2,933 km<sup>2</sup> for fin whales; 56,609 km<sup>2</sup> for sei whales; 54,341 for minke whales), and the acoustic footprint of the proposed survey is sufficiently small that feeding opportunities for these species would not be reduced appreciably. Due to the temporary nature of the disturbance and the availability of similar habitat and resources in the surrounding area, the impacts to marine mammals and the food sources that they utilize are not expected to

cause significant or long-term consequences for individual marine mammals or their populations. Even considering the increased estimated take for one species (minke whales), the impacts of these lower severity exposures are not expected to accrue to a degree that the fitness of any individuals would be impacted and, therefore, no impacts on the annual rates of recruitment or survival would result.

As previously discussed in the 2022 IHA (87 FR 52913, August 30, 2022), impacts from the survey are expected to be localized to the specific area of activity and only during periods when Vineyard Northeast's acoustic sources are active. There are no rookeries, mating or calving grounds known to be biologically important to marine mammals within the proposed survey area.

As noted for the 2022 IHA (87 FR 52913, August 30, 2022), the proposed survey area overlaps a migratory corridor BIA and migratory route SMAs (Port of New Jersey/New York and Block Island) for North Atlantic right whales. As the survey activities would be temporary and the spatial acoustic footprint produced by the survey would be very small relative to the spatial extent of the available migratory habitat in the BIA (269,448 km<sup>2</sup>), NMFS does not expect North Atlantic right whale migration to be impacted by the survey. Required vessel strike avoidance measures would also decrease risk of ship strike during migration; no ship strike is expected to occur during Vineyard Northeast's proposed activities. Vineyard Northeast would be required to comply with seasonal speed restrictions of these SMAs, and in any dynamic management area (DMA), should NMFS establish one (or more) in the proposed survey area. Additionally, Vineyard Northeast requested and NMFS proposes to authorize only 12 takes by Level B harassment of NARWs. This amount is less than the 40 Level B harassment takes authorized in the 2022 IHA due to the updated Duke University density data (Roberts *et al.*, 2023) and reduced survey area.

Although take by Level B harassment of North Atlantic right whales has been proposed for authorization by NMFS, we anticipate a very low level of harassment, should it occur, because Vineyard Northeast is required to maintain a shutdown zone of 500 m if a North Atlantic right whale is observed. The takes proposed for authorization account for any missed animals wherein the survey equipment is not shut down immediately. As shutdown would be called for immediately upon detection (if the whale is within 500 m), it is likely the exposure time would be very limited and received levels would not be much above the harassment threshold. Further, the 500-m shutdown zone for right whales is conservative, considering the distance to the Level B harassment isopleth for the most impactful acoustic source (*i.e.*, Applied Acoustics AA251 Boomer—which may not be used on all survey days) is estimated to be 178 m, and thereby minimizes the potential for behavioral harassment of this species. As noted previously, Level A harassment is not expected due to the small permanent threshold shift (PTS) zones associated with HRG equipment types proposed for use. NMFS does not anticipate North Atlantic right whale takes that would result from Vineyard Northeast’s activities would impact annual rates of recruitment or survival. Thus, any takes that occur would not result in population level impacts.

We also note that our findings for other species with active UMEs that were previously described for the 2022 IHA (87 FR 52913, August 30, 2022) remain applicable to this project. In addition, our analysis of survey effects on species with BIAs that overlap with the proposed survey area remains unchanged. Therefore, in conclusion, there is no new information suggesting that our analysis or findings should change.

Based on the information contained here and in the referenced documents, NMFS has preliminarily determined the following: (1) the required mitigation measures would effect the least practicable impact on marine mammal species or stocks and their habitat; (2) the proposed authorized takes would have a negligible impact on the affected marine

mammal species or stocks; (3) the proposed authorized takes represent small numbers of marine mammals relative to the affected stock abundances; (4) Vineyard Northeast's activities would not have an unmitigable adverse impact on taking for subsistence purposes as no relevant subsistence uses of marine mammals are implicated by this action, and (5) appropriate monitoring and reporting requirements are included.

### **Endangered Species Act**

Section 7(a)(2) of the Endangered Species Act of 1973 (ESA; 16 U.S.C. 1531 *et seq.*) requires that each Federal agency insure that any action it authorizes, funds, or carries out is not likely to jeopardize the continued existence of any endangered or threatened species or result in the destruction or adverse modification of designated critical habitat. To ensure ESA compliance for the issuance of IHAs, NMFS OPR consults internally whenever we propose to authorize take for endangered or threatened species.

NMFS is proposing to authorize the incidental take of five species of marine mammals which are listed under the ESA, including the North Atlantic right, fin, sei, blue, and sperm whale, and has determined that this activity falls within the scope of activities analyzed in NMFS GARFO's programmatic consultation regarding geophysical surveys along the U.S. Atlantic coast in the three Atlantic Renewable Energy Regions (completed June 29, 2021; revised September 2021).

### **Proposed Authorization**

As a result of these preliminary determinations, NMFS proposes to issue an IHA to Vineyard Northeast for conducting high-resolution geophysical site characterization surveys offshore of Massachusetts to southern New Jersey for a period of 1 year, provided the previously mentioned mitigation, monitoring, and reporting requirements are incorporated. A draft of the proposed IHA can be found at

<https://www.fisheries.noaa.gov/permit/incidental-take-authorizations-under-marine-mammal-protection-act>.

## **Request for Public Comments**

We request comment on our analyses (included in both this document and the referenced documents supporting the 2022 IHA; Incidental Take Authorization (ITA) application; issued IHA; and **Federal Register** notices including 87 FR 30872, May 20, 2022; 87 FR 52913, August 30, 2022), the proposed authorization, and any other aspect of this notice of proposed IHA for the proposed site characterization surveys. We also request comment on the potential for renewal of this proposed IHA as described in the paragraph below. Please include with your comments any supporting data or literature citations to help inform our final decision on the request for MMPA authorization.

On a case-by-case basis, NMFS may issue a one-time, 1-year renewal IHA following notice to the public providing an additional 15 days for public comments when (1) up to another year of identical or nearly identical activities as described in the **Description of the Proposed Activity and Anticipated Impacts** section of this notice is planned or (2) the activities as described in the **Description of the Proposed Activity and Anticipated Impacts** section of this notice would not be completed by the time the IHA expires and a renewal would allow for completion of the activities beyond that described in the *Dates and Duration* section of this notice, provided all of the following conditions are met:

- A request for renewal is received no later than 60 days prior to the needed renewal IHA effective date (recognizing that the renewal IHA expiration date cannot extend beyond 1 year from expiration of the initial IHA);
- The request for renewal must include the following:
  - (1) An explanation that the activities to be conducted under the requested renewal IHA are identical to the activities analyzed under the initial IHA, are a subset of the



activities, or include changes so minor (*e.g.*, reduction in pile size) that the changes do not affect the previous analyses, mitigation and monitoring requirements, or take estimates (with the exception of reducing the type or amount of take);

(2) A preliminary monitoring report showing the results of the required monitoring to date and an explanation showing that the monitoring results do not indicate impacts of a scale or nature not previously analyzed or authorized; and

- Upon review of the request for renewal, the status of the affected species or stocks, and any other pertinent information, NMFS determines that there are no more than minor changes in the activities, the mitigation and monitoring measures will remain the same and appropriate, and the findings in the initial IHA remain valid.

Dated: June 14, 2023.

**Kimberly Damon-Randall,**

*Director, Office of Protected Resources,*

*National Marine Fisheries Service.*